

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

JONATHAN LEE RICHES
REG #40948-01
d/b/a Rockefeller Riches

PLAINTIFF

v.

4:07CV00780 WRW/JTR

WAL-MART STORES, INC.

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge William R. Wilson, Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the United States District Judge, you must, at the same time that you file your written objections, include a "Statement of Necessity" that sets forth the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence to be proffered at the requested hearing before the United States District Judge was not offered at the hearing before the Magistrate Judge.
3. An offer of proof setting forth the details of any testimony or other evidence (including copies of any documents) desired to be introduced at the requested hearing before the United States District Judge.

From this submission, the United States District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

I. Discussion

Plaintiff is currently incarcerated at the Williamsburg Federal Correctional Institution in Salters, South Carolina. *See* docket entry #1. On August 28, 2007, Plaintiff filed a *pro se* Complaint alleging that his former employer, Defendant Wal-Mart Stores, Inc., violated Title VII and the Americans with Disabilities Act when it discriminated against him because he is blind, deaf, and has terminal cancer. *Id.* On September 4, 2007, Plaintiff filed a Motion to Voluntarily Dismiss stating that:

I awoke from a deep sleep. I dreamed I was a deaf, blind Wal-Mart worker. I never worked for Wal-Mart! I don't want to work for Wal-Mart! I don't want any money! Why don't [sic] the world leave me be!

See docket entry #4.

Plaintiff is entitled to voluntarily dismiss this action, without a court order, because Defendants have not yet been served or filed a responsive pleading. *See* Fed. R. Civ. P. 41(a)(1)(A). Rule 41(a)(1)(A) further provides that the dismissal should be without prejudice. However, because

Plaintiff now concedes that he never worked for Wal-Mart, the Court believes that the dismissal should be with prejudice. Additionally, the Court recommends that the dismissal of this action be counted as a “strike,” as defined by 28 U.S.C. § 1915(g),¹ because all the allegations in the Complaint are clearly frivolous.

II. Conclusion

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff’s Motion to Voluntarily Dismiss (docket entry #4) be GRANTED, and that this case be DISMISSED, WITH PREJUDICE.
2. The dismissal of this action CONSTITUTE a “strike,” as defined by 28 U.S.C. § 1915(g).
3. The Court CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order and Judgment adopting this Recommended Disposition would not be taken in good faith.

Dated this 6th day of September, 2007.



John R. Thompson
UNITED STATES MAGISTRATE JUDGE

¹ Specifically, 28 U.S.C. § 1915(g) provides that: “In on event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section [the *in forma pauperis* statute] if the prisoner has on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”